

## I

**Republican Means, Imperial Ends***American Empire and the Rule of Law*

Speaking with the *Christian Advocate*'s James Rusling in 1903, President William McKinley, a man known for his piety, recounted the divine providence of his administration's "benevolent imperialism." In a narrative that is now a fixture of Philippine historical lore, McKinley claimed that he "didn't want the Philippines, and when they came to us, as a gift from the gods, I did not know what to do with them." Turning to God rather than to Republicans and Democrats for "light and guidance," McKinley deemed it "too cowardly and dishonorable" to return the Islands to Spain; but "bad business and discreditable" to turn them over to France and Germany, America's commercial rivals in Asia; yet unrealistic to "leave them to themselves – they were unfit for self-government." Consequently, there was no choice "but to take them all, and to educate the Filipinos, and uplift and civilize and Christianize them, and by God's grace do the very best we could by them, as our fellow-men for whom Christ also died."<sup>1</sup>

To scholars critical of American colonialism in the Philippines and attuned to the disjoint between its lofty goals, self-centered policies, and dysfunctional outcomes, McKinley's anecdote comes freighted with irony.<sup>2</sup> Its baggage notwithstanding, this story is a valuable artifact that encapsulates the justifications that validated American colonialism with her republican polity, informed her colonial policy, and influenced the shape of the Philippine colonial constitutional order. As an intellectual relic from America's imperial moment, McKinley's account evokes the conceptual cosmos within which such ideas were generated, given meaning, and acquired authority. Resting on the shared belief that the American nation's commitment to popular sovereignty and constitutional

government both defined and distinguished her, this paradigm animated benevolent imperialism's claim that an empire dedicated to civilizing Filipinos through what was regarded as a uniquely American formulation of the rule of law would be compatible with and as unique as the tradition that it duplicated.

These historical perceptions have helped shape academic, official, and popular notions of American exceptionalism more generally and, by extension, an exceptional American empire. That American values produced a unique imperialism either for not being an empire at all, or for being an empire, but one that was informal or liberal and benign,<sup>3</sup> has since been challenged by scholarship demonstrating that developments once thought to be singularly and essentially American are iterations of broader global trends and responded to imperatives in both periphery and metropole.<sup>4</sup> Without subscribing to exceptionalist representations, examining the faith of American colonial actors in their tradition's exceptionalism is crucial to grasping its symbolic significance and material implications. Embodying the ideological universe inhabited by these players, these ideas informed the design, conduct, and legitimation of the American colonial project and the imprint it left on the Philippine Islands and are indispensable to fully understanding America's colonial saga in the Pacific. Thus, this chapter unpacks the discourse by which imperialists and anti-imperialists articulated competing visions of their shared world of meanings as they attempted to either rationalize or reject the decision to acquire and govern the Philippine Islands in the late nineteenth century. It then examines the groundwork laid by the McKinley administration to construct an ideologically compatible imperialism that facilitated some expression of Filipino consent while creating the capacity to exercise it.

### **American Expansion: Destiny and Decision**

The image of the Islands as a "gift from the gods" is telling. Implying a lack of deliberation and effort, it suggested that Americans were fated to get the Islands and thus bereft of self-serving motives. That Puerto Rico and the Philippine Islands came as spoils of her easy victory over Spain perhaps created the impression that the Islands were America's reward for intervening in the Cuban revolution. Along with protecting US business interests from growing instability, the United States had launched the Spanish-American War in response to widespread public clamor to put an end to brutal Spanish repression of the Cuban people.

In asserting that “no other course was possible than to destroy Spanish sovereignty” and that this “course created our responsibility before the world and with the unorganized population whom our intervention had freed from Spain,” McKinley’s 1900 reelection campaign platform similarly portrayed the acquisition of the Islands as inadvertent and inevitable. To be sure, McKinley’s designs for the Islands were difficult to discern. Aware of the divisiveness of the issue of imperialism for a democratic polity, the politically astute former Civil War veteran, Ohio governor, and member of Congress played his cards very close to his chest. Just as he had gradually unfolded his administration’s decision to intervene in Cuba “in a sequence of incremental escalation until Spain was forced to choose between steps that promised either early independence for the Cuban colony or American intervention to accomplish the same end,” so, too, did he obscure his ultimate plans for the Philippines by following “a series of steps during the course of which the Cabinet and peace commissioners were led to the conclusion that the United States had no alternative but to demand sovereignty over the islands.”<sup>5</sup> Having carefully maneuvered to consolidate American control over the Islands until American occupation and rule were a *fait accompli*, this “marvelous manager of men”<sup>6</sup> maximized his leverage with Spain, with Filipinos who had been revolting against Spain, and with the US Congress, which had constitutional authority over the territories.

### *Destiny*

Such portrayals fed into the growing sense among late nineteenth-century Americans that their nation was destined for empire. Expansion, after all, had been built into the nation’s design and was its practice. Indeed, Americans of the founding generation regarded “the enlargement of the orbit within which such systems are to evolve”<sup>7</sup> as key to the success, survival, and stability of what they regarded an unprecedented republican experiment. Extending its geographical sphere would, in Alexander Hamilton’s view, help safeguard their republic from reprising the fate of its turbulent ancient predecessors, whose lives were as short as their deaths were violent.<sup>8</sup> James Madison believed that expansion would hinder factions from acting in unison against other citizens or the larger community and thus offered the best means of controlling “the effects of unsteadiness and injustice with which a factious spirit has tainted our public administration.”<sup>9</sup> Now viewed as imperial in character, subsequent continental expansion into areas then deemed *terra nullius* preserved the American republic’s enlarged orbit as her population grew and appeared to provide

the safety valve that Madison had envisioned. Reflecting on this process a century later, historian William A. Williams argued that expansion both forestalled any single faction from dominating the nation's political institutions and provided a larger field to exploit or develop,<sup>10</sup> which mitigated clashes over what Madison had identified as faction's most common and durable source – the “various and unequal distribution of property.”<sup>11</sup>

Within an intellectual environment that had absorbed the insights of Charles Darwin's theories on evolution, America's “irresistible tendency to expansion” struck the dollar diplomat Charles Conant as dictated by “a natural law of economic and race development.”<sup>12</sup> “We must not forget,” future Harvard University president Abbott Lawrence Lowell reminded *Atlantic Monthly* readers in 1899, “that the Anglo-Saxon race is expansive.”<sup>13</sup> Surveying a century of Anglo-Saxon expansion in 1897, Yale medievalist George Herbert Burns noted that more than one quarter of the earth's total land area had come under English and American rule.<sup>14</sup> Viewed through Social Darwinism's fusion of the biological theory of evolution with historical development, Anglo-Saxon dominion offered proof that the race was the fittest.

Late nineteenth-century American expansion pointed overseas, because space in the continent seemed to run out just as the Second Industrial Revolution erupted. Summarizing the scholarly consensus on the source of empire's motivations, Walter LaFeber traces its impetus ultimately to spectacular growth and the corresponding crises that it fueled. The mainland's inability to absorb the glut of products and capital generated by American companies “running hard” spawned wrenching economic depression and labor riots, creating the need for external markets to alleviate the congestion.<sup>15</sup> Interpreting this history through an evolutionary prism that translated the natural progression of the life cycle, from birth to death, as universal stages of civilizational progress, public intellectuals like Brooks Adams and Josiah Strong sensed that the United States had reached her peak and was in danger of decline. Even before the historian Frederick Jackson Turner's famous frontier thesis had, in Theodore Roosevelt's words, “put into definite shape a good deal of thought which has been floating around rather loosely,” many had tied America's growth to the availability of free land in her vast continental frontier and, as a reverse corollary, traced her looming decline to the closing of this frontier.<sup>16</sup> Answering the oft-repeated question, “We here have been getting along exceedingly well; why cannot we keep on as we

have been going,” Lowell replied: “An engine cannot keep on if there is no more track.”<sup>17</sup>

Prior to the Spanish-American War, this metaphorical track had been extended by the complementary overseas activities of American merchants and missionaries, who ventured into Latin America and the Pacific, seeking markets and concessions and spreading the Protestant values to which Strong credited the stability of America’s Anglo-Saxon civilization. Winning the war made it possible to extend this track more literally. As the US Senate deliberated over the 1898 Treaty of Paris ceding Cuba, Puerto Rico, and the Philippine Islands from Spain to the United States and confronted the concrete prospect of an imperial America, the diverse group of political, business, and intellectual leaders that comprised the anti-imperialist coalition advocated rejection.

### *Decision*

Massachusetts Senator Henry Cabot Lodge, McKinley’s majority floor leader, had waxed enthusiastic during the ratification debates that Manila would afford “inestimable advantages” in developing trade with China, “the greatest of all markets.”<sup>18</sup> Some anti-imperialists, however, balked at empire’s costs and risks.<sup>19</sup> While imperial expansion suited the northern core economies of the imperialists, political scientist Richard Bensele notes that this strategy held little appeal for the peripheral economies of the South and Mountain West where anti-imperialists clustered, because they produced raw materials that sought domestic and foreign industrial markets instead of manufactured goods for colonies to absorb.<sup>20</sup> Though not categorically anti-imperialist and despite close ties to the McKinley administration, the powerful Havemeyer Sugar Trust was wary of competition that domestic sugar faced from sugar imported from these new possessions and opposed including them within the American tariff wall.<sup>21</sup> Indeed, rather than dispose of mainland surpluses as hoped, expansion threatened to spur the influx, not only of insular products, but also their cheaper labor, which labor leaders like Samuel Gompers feared would unfairly compete with American workers.<sup>22</sup>

Beyond economic threats, industrialist Andrew Carnegie worried that prospective gains were outweighed by “the unceasing alarms of war which work most injury, causing capital to shrink from enterprise, frightening the whole financial, commercial, and manufacturing world, and throwing upon the workingmen at last the chief burden of want and suffering, through loss of employment.”<sup>23</sup> For to venture out into the world was to

enter an imperial arena, where Great Britain, France, Germany, and Italy had carved up the continents of America, Asia, and especially Africa, and the United States had begun negotiations to acquire the Danish Virgin Islands before it intervened in Cuba.<sup>24</sup> Prior to war, overseas Americans had become embroiled in rivalries with their European counterparts and needed increasingly aggressive political and military support from their home government. In his proposals to modernize the American Navy, Alfred Thayer Mahan anticipated that the United States would need strategic naval bases, one of which was Manila, from which to protect her carrying trade and would likely need to control the hinterland in order to hold these facilities.<sup>25</sup> Vermont Republican Senator George Franklin Edmunds foresaw flowing to such bases “a constant current of supply and reinforcement of material and men”<sup>26</sup> to govern a distant archipelago in revolt and defend US interests from competition.

Thus, empire risked entangling America with European politics, against which erstwhile Democratic presidential candidate William Jennings Bryan reminded his audiences, “Washington and Jefferson with equal emphasis [had] warned their countrymen.”<sup>27</sup> Indeed, Britain enthusiastically supported America’s imperial aspirations. Toward the end of the nineteenth century, the former antagonists came to prefer maintaining open access to markets, especially China’s, rather than allotting territorial spheres of influence among different world powers. But the British had stakes specific to the Philippine Islands. With investments totaling \$100 million by 1896, the British controlled 40 percent of the Islands’ foreign trade and owned 80 percent of its foreign enterprises, including its first railroad company and two out of three of its leading banks. Ruel Pagun-san’s study of British consular dispatches during the revolutionary period reveal that the British had considered purchasing the Islands from Spain, but could not afford to maintain and administer another possession without detriment to her prized colonies or the metropole. But rather than lose the Islands to other interested European powers, notably the Germans, whose ships plied Manila Bay as the US and Spanish navies did battle, the British preferred that the Americans keep them and thus encouraged their imperial ambitions.<sup>28</sup> As Germany’s imperial interests fell more in step with those of Russia, Great Britain sought to forge an alliance with the United States, smoothing over differences that had stemmed from their earlier conflicts over Brazil and Venezuela.<sup>29</sup>

More problematic than its economic costs and political risks was empire’s inconsistency with American values. At Protestant missionaries rejoicing over the prospect of spreading Christianity through empire,

Bryan bristled that “[t]he command ‘Go ye into all the world and preach the gospel to every creature’ has no Gatling gun attachment.”<sup>30</sup> Harvard Law professor James Bradley Thayer saw in imperial duties an opportunity to enlarge American ideas of the nature and ends of government, as “found in the reflex effect of colonial administration upon the home government, and its people and public men.”<sup>31</sup> But Marion Butler, the populist North Carolina senator, anticipated large numbers of office-holders descending on the Islands like imperial carpetbaggers who “would not only draw their salaries from our government, but would consider it their privilege to plunder and oppress the Filipinos for their own personal profit or gain.”<sup>32</sup>

Deeper than these contradictions, anti-imperialists posited a fundamental inconsistency between empire and the American republic. For while “our guns destroyed a Spanish fleet,” Bryan asked, “can they destroy the self-evident truth, that governments derive their just powers, not from superior force, but from the consent of governed?” With Filipinos waging a war of independence, anti-imperialists believed that American rule could be based only on coercion and thus violate what Bryan termed the “controlling national idea.”<sup>33</sup> Entwined with the nation’s traditions and texts, self-government animated American political institutions and delineated the purposes they could serve. Consequently, “our form of government, our traditions, our present interests and our future welfare, all forbid our entering upon a career of conquest,”<sup>34</sup> lest empire transform or, worse, destroy their distinct American identity.

Anglo-Saxonists in England and America had portrayed empire as compatible with America’s biological nature. Historian Paul Kramer demonstrates how the British attempted to convince Americans that they shared a common biological destiny to expand their race’s dominion and to spread their “unique, ‘free’ political values and institutions.”<sup>35</sup> Anglo-Saxon historians believed that Englishmen had been able to perfect their inherited Teutonic models of self-government because of their peculiar historical development in isolation from the continent.<sup>36</sup> Thus, with the simultaneous outbreak of the Spanish-American and Anglo-Boer Wars, the British exhorted Americans to take up what British writer Rudyard Kipling famously termed the “white man’s burden” and demonstrate their innate ability to efficiently administer weaker races through their “empires of liberty.”<sup>37</sup>

But Bryan rejected references to a common Anglo-Saxon imperial destiny and denied its inevitability. For a heterogeneous polity increasingly

unreceptive to talk of Anglo-Saxon superiority, Bryan depicted destiny not as a “matter of chance,” but “of choice”; not “a thing to be waited for,” but “a thing to be achieved” and at all times determined by the nation’s purpose.<sup>38</sup> And America’s purpose beckoned her to a loftier calling. Not only did her character and mission diverge from the British, the American melting pot, Bryan argued, had combined the virtues of many great civilizations and forged an American civilization superior to the Anglo-Saxon. For while the British spread their empire of liberty “by force of arms” and ultimately “for the benefit of Anglo-Saxons,” Americanism would, ‘by the influence of example, excite in other races a desire for self-government and a determination to secure it.’”<sup>39</sup>

Blending the themes of destiny and decision, McKinley’s “gift from the gods” framed the lack of thought, choice, and effort by which Americans had obtained the Islands as preordination – albeit no longer by their Anglo-Saxon blood, but by God. The Spanish-American War seemed predestined in offering a unique opportunity to realize many objectives: to protect and fortify American economic interests in Latin America and the Pacific against European imperial competition; to express Christian compassion by saving Cubans – and later, Filipinos – from a medieval Spanish empire’s oppressive policies and practices; to secure in Manila a naval base from which to project American power. Crystallized in a single urgent decision, in other words, were multiple manifestations – commercial, humanitarian, strategic – of the drive for American expansion in the late nineteenth century.

But if receiving a divine gift betokened a divine purpose, what did it mean for God to bestow a colony on a self-governing republic? To reject the colony in order to shield self-government from empire, as Bryan would have preferred, smacked of ingratitude and disobedience, even cowardice. Instead, benevolent imperialists would accept God’s gift and give back – propagating self-government, not by irresponsibly leaving hapless Filipinos on their own, but by employing empire humanely to prepare them to properly govern themselves.

### **Civilizing Benevolence through an American Rule of Law**

By itself, however, benevolence sufficed neither to protect the American republic from the dangers of empire nor to reconcile the contradiction between the two modes of governance. Proposing a solution ten days after the Treaty of Paris was signed, Republican Senator Henry Teller of Colorado outlined for the Senate a colonial government that would



safeguard republic from empire, presaging what later took shape in the Islands. Implying that colonialism need not be inherently despotic or exploitative, Teller proposed that the United States administer the new possessions not in violation of, but “in accordance with the great fundamental principles that permeate and underlie republican institutions,” namely “that the just powers of government are derived from the consent of the governed” and that it was “our duty to secure to these people just such political rights and privileges as they are entitled to under our system,” as qualified “by their condition.”<sup>40</sup> For if American principles followed the American flag to the Islands, then “there will be no harm done” if it “floated there as an emblem of national power.” Rather, it would symbolize the American people’s belief that their flag was “capable of giving to those people American law, American freedom, American progress, and enabling them to share in prosperity with us as well as in American glory.”<sup>41</sup>

To restrain colonial despotism with the same popular and legal limits by which the American polity was governed was to invoke the American iteration of the rule of law that was so foundational to the nation’s existence and identity. Through a revolution consolidated by popular law-making, Americans believed they molded out of disparate heritages an exceptional nation.<sup>42</sup> By extending their rule of law, they hoped to Americanize colonialism and constitute an exceptional empire as well.

### *Exceptional Empire and the Rule of American Law*

Because the rule of law was integral to the American conception of civilized government, it was essential to the construction of benevolent imperialism as a civilizing mission. Indeed, in explaining to his Filipino students the philosophy and mechanics of their shared constitutional tradition, Associate Philippine Supreme Court Justice George Arthur Malcolm singled out “its protections of the individual against arbitrary governmental intrusion” as the single most important trait that distinguished “modern civilized government” from the “ancient and medieval.”<sup>43</sup> That a sovereign people would willingly bind themselves to these limits *in writing*, as in a contract, made their government even more civilized – perhaps *the* most civilized. For considered unique to the American rule of law was that it had a written repository, and encompassing the Islands within the sphere of its principles extended to the imperial realm the discourse and practice structured by the foundational texts that gave them concrete, definitive, and authoritative expression. Primarily through the tradition’s most important articulation, the US Constitution, American

values would come to shape a colonial legal regime now included in the constitutional conversation. For the US Constitution to be the source of imperial restraint seemed exceptionally civilized and benevolent.

It was not that European imperialism was lawless, but Americans once again perceived as unique their decision to use the substance of their *own* laws to govern both citizens and subjects in the Islands. This self-image found some support in past and present imperial practices. As Lauren Benton demonstrates, plural legal orders proliferated in premodern colonial regimes, but plural legal sources continued to be applied even after increased state capacities facilitated consolidating legal hegemony toward the era of high colonialism.<sup>44</sup>

As a republic, France had grappled with the contradiction between imperialism and republicanism in her West African colonies. Like the Americans, the French had justified colonial rule as civilizing; unlike the Americans, they had elected initially not to extend their own laws and forms of governance to their African subjects. Instead, Alice Conklin shows that they governed their African subjects with their notion of native law and administered French laws only to Europeans and Africans who resided in French settlements and qualified as French citizens.<sup>45</sup>

If a sister republic withheld her legal and political institutions from her colonial subjects, more so did monarchical imperialists. The Spaniards, for example, had devised special laws, particularly the Laws of the Indies, for their native subjects and later conferred on colonial governors vast discretion to filter the application of the Spanish codes to the colonies.<sup>46</sup> Like the French, the Dutch in the Netherlands East Indies opted to apply Roman-Dutch law to Europeans and what they identified as customary law to natives.<sup>47</sup> Even liberal monarchies like Great Britain had deemed the English laws and institutions they had extended to their white settler colonies ill-suited to colonies inhabited by “weaker races,” such as India. Yet the British could not bring themselves to embrace limitless authority, for, as David Gilmartin explains, the history of the rule of law in India was intertwined with their increasing “preoccupation in the eighteenth and nineteenth centuries with law as the particular foundation of their own political ‘genius’ as a conquering power – a mark, in fact, of British political identity.”<sup>48</sup> But while British law was as constitutive of British national identity as American law was for Americans, it would not shape her imperial image. Thus, the British elected to rule India’s Hindu and Muslim groups using their respective laws as determined by Orientalist scholars.<sup>49</sup> As India’s plural legal system was formalized after the Crown consolidated control over the colonial state following the 1857 Indian